



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/604,114	06/26/2000	David J. Farrar		3775

7590 07/15/2004
Baker Botts L.L.P.
The Warner, Suite 1300
1299 Pennsylvania avenue, N.W.
Washington, DC 20004-2400

EXAMINER

WOO, JULIAN W

ART UNIT PAPER NUMBER

3731

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/604,114

Applicant(s)

FARRAR, DAVID J.

Examiner

Julian W. Woo

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,14,15,17,18,20,21,23,24,26,27 and 29-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 41-58 is/are allowed.
- 6) ☒ Claim(s) 1,3,4,12,15,18,21,24,27,29,30,38-40, and 59 is/are rejected.
- 7) ☒ Claim(s) 5-11,14,17,20,23,26 and 31-37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/21/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 21, 2004 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, 18, 29, 30, and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaneko et al. (4,957,508). Kaneko et al. disclose, in figure 1 and in col. 2, line 55 to col. 3, line 12, a graft comprising a tubular portion and a compliant flared portion or first and second flared portions, where each flared portion has a circumferential skirt, where the graft comprises a polyether urethane-urea and where a flared end central axis is parallel to a central axis of the tubular portion, and where the graft is formed without intervening seams or overlap.

Art Unit: 3731

4. Claims 1, 12, 15, 21, 27, 38-40, and 59 are rejected under 35 U.S.C. 102(a) as being anticipated by Harris et al. (6,589,278). Harris et al. disclose, in figures 4-13 and in col. 3, lines 35 –39 and col. 4, lines 16-24, a graft comprising a tubular portion (52) and a compliant flared portion or first and second flared portions, where each flared portion has an elongated, elliptical, circumferential skirt (54), where the flared portion includes a flared end central axis that is oblique to the central axis of the tubular portion, where the skirt is oriented for attaching at an acute angle to a blood vessel, and where the graft is formed without intervening seams or overlap.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harris et al. in view of Yang et al. (5,989,287). Harris et al. disclose the invention substantially as claimed, but do not disclose a reinforcing member wound around and substantially

Art Unit: 3731

concentric with the tubular portion. Yang et al. teach, in col. 5, line 66 to col. 6, line 4, a fabric mesh as a reinforcing member. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Yang et al., to include a fabric mesh in the graft of Harris et al. Such a member would strengthen the graft and prevent its rupture.

Allowable Subject Matter

7. Claims 41-58 are allowed.

8. The following is an examiner's statement of reasons for allowance: None of the prior art of record, alone or in combination, discloses a method of manufacturing a bypass graft, where at least one layer of polyurethane is formed over a mandrel having a tubular portion and a flared end bulb with a flared end central axis.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

9. Claims 5-11, 14, 17, 20, 23, 26, and 31-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses a graft formed

Art Unit: 3731

with at least a layer of polyether urethane-urea with an additive having, in a weight range of 1% to 5%, a combination of MDI, polydimethylsiloxane, and 1,4-butanediol; and where the polyether urethane-urea is end-capped with dibutylamine.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (703) 308-0421. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703) 308-0858. The official FAX number is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3731

A handwritten signature in black ink, reading "Julian W. Woo". The signature is fluid and cursive, with the first name "Julian" being more prominent than the last name "Woo".

Julian W. Woo
Primary Examiner

July 12, 2004
